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must be independent and reside in the political power which is back of the court, and thus we are brought again to what may be said to be the *pons asinorum* of the entire project.

The Carnegie Endowment has rendered a distinctive service in printing in so accessible a form these original materials for the student of international law.

Roland R. Foulke.

FREEDOM OF SPEECH. By Zechariah Chafee Jr., Professor of Law, Harvard University. Harcourt, Brace and Howe, 1920, pp. 431.

When the hosts of Cambyes invaded Egypt, it is recorded that the Egyptian soldiers refused to fight and were slain unresisting, because each invader bore before him a cat bound to his arm as a shield. This superstitious fear, in the light of modern reason, appears grotesque; but neither the Declaration of Independence nor the Constitution of the United States changed human nature. Strong men are swept down, and the most cherished hopes of a christian world yield under stress and strain of hysteria.

When the mobs of Paris, wild with their new liberty and drunk with power, challenged the established institutions of the world, 300,000 Jacobins dominated the 26,000,000 people of France. Driven by fear of losing their liberty they destroyed the monarchy, established the worship of the Goddess of Reason, attempted to reduce the population to 5,000,000, and did massacre 3,000,000 persons before their madness was checked.

A small minority of the people of Russia organized as demagogic despots, are repeating on a larger scale the horrors of the French Revolution. Little wonder that mankind is apprehensive. During four and a half years the fiery concentrated energy of the human race has been applied to the principle of self-preservation; whatever a strong and preponderant public opinion regarded as inimical to the public welfare was treated as within the scope of the police power to restrain, and constitutional limitations were impotent to furnish protection.

Matthew Arnold proposed in the interest of honest thinking that we cease to employ those expressions which have been spoiled by long and continued misconception and misuse. Among such battered terms he designated the word Liberty.

The misconception and consequent bewilderment of the unthinking is due to the apprehension of liberty as an abstract, and not a relative quantity. Having absorbed Jefferson's declaration "that each human being with the endowment of life from the hand of God starts with the inalienable rights of life, liberty and the pursuit of happiness," some minds are unable to discriminate between the absolute civil and political liberty of a man on an uninhabited island, and his relative rights and duties as an individual dwelling in a society restricted by law, where the citizen must consider not himself alone, but the entire body politic of which he is but one, and submit to such restraints as the sovereign of which he is a part, imposes.

Herodotus, describing the freemen of Greece, said—"though free they are not absolutely free for they have a master over them, the law."

The war has brought into prominence the fact that the aberrations of undisciplined minds regard the constitutional power which lawfully conscripted millions of men to fight upon the battlefields of Europe, as impotent to stop the treasonable mouthings of a soap-box orator.

Professor Chafee's book "Freedom of Speech" in a wise, sane, dignified, impartial, lucid and admirable way, has set down the rights and limitations of the individual in relation to freedom of speech. He removes in the very beginning of his volume a prevalent belief that the constitution assures an unrestricted right to pronounce upon all occasions, restrained only by the penalties attached to slander. The reader is informed that there is no provision in the constitution relating to the subject other than the security afforded members of Congress, and that in the First Amendment the prohibition is found which forbids Congress to make any law "abridging the freedom of speech;" but neither the constitution nor the amendments enlarge, restrict or in any manner other than as there expressed, impair or amplify the right of the citizen to freedom of speech.

The book defines this right in clear terms, and traces its historical development.

The right of self-defense is at all times inherent in every nation. There are times when half baked social and economic philosophies which ignore alike fundamental traits of human nature and vital principles of human liberty are as harmless as a child's prattle; at other times the state of intelligence may be such that the populace will be thrown into a flame. The author indicates in clear terms the distinction between license and liberty, mania and reason, and shows with what facility debauchery may be cloaked in the name of freedom. He makes it plain that when from necessity a crime must be designated in generic terms, the exercise of intuition, common sense, and calm judgment, free from hysteria, is demanded not alone from the people, but in the tribunals before whom the accused are brought for trial.

The distinction between the right to discuss and urge the repeal or modification of laws and changes in government, and advocating resistance to the law, and advising the overthrow by violence of the government, is made apparent.

How much depends upon a proper sense of proportion is shown by a wealth of citation of cases tried in the courts, recording the treatment of those who would make chaos and call it progress, of the "conscientious objector" who prefers that his liberty be secured by the efforts of better men than himself, of those casual persons too proud to fight who detached themselves from the great tragedy, of the alien enemy, and sympathizers with the remorseless Hun. Time, place and circumstance, it is shown, are elements which enter largely into the right to speak freely.

A man with educational advantages to indicate the impropriety of his conduct, attempted to deliver, unbidden, a diatribe against capital, and interrupted a Sunday service in a fashionable New York church. His removal to a prison cell for disturbing religious worship called forth an attack upon what he regarded as an unlawful restraint of free speech; an address that could have been delivered with impunity at a proper time in an appropriate place was here improper.

One prompted by a commendable desire to lighten the gloom of a funeral gathering, taking advantage of the silence of those seated around the casket

of the departed, who should contribute to the occasion a comic song, or "funny story," would find no constitutional guarantee to prevent his ejection.

During the war there was an upheaval of the whole national life, a tribute demanded of thousands of precious lives, and a ceaseless and pitiless drain upon our potential vitality. The nation suffered from "nerves;" and there was neither sympathy nor forbearance for those who by word or deed rendered aid or comfort to the foe.

"Freedom of Speech" contains a magazine of information. Professor Chafee has made a book of great value and absorbing interest not alone for the layman, but to the lawyer and judge. He has fortified his text by an excellent bibliographic appendix, an index of reported cases under the Espionage Acts, and a digest of state statutes appertaining to freedom of speech, together with a complete index to the entire volume.

The book is a fine piece of work, well executed, and sheds a brilliant light where illumination is greatly needed.

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CASES ON SURETYSHIP. By Clinton DeWitt. Bobbs-Merrill Co., Indianapolis, 1920, pp. 726.

The editing of a case-book is much more difficult than would appear to those who have not tried to select from the great mass of more or less inconsistent decisions of the courts a representative group sufficient in scope to give the student a fair view of the subject. Should the historical side be emphasized? Or should the main object be to develop those controversial subjects which lead to classroom discussion and, as the saying is, teach the student to think? In suretyship, the case-books of Professors Ames and Henning have covered the historical side very fully and Professor DeWitt in presenting a new collection of cases has frankly made it his object to present the modern side of the problems connected with this most important subject, particularly those connected with the corporate surety, and those large enterprises with which the modern practice of requiring bonds is specially associated. Much law has been made in the last few years in this field and more is in the making. Hence this selection will be found both interesting and practical. If any fault is to be found with the book at all, it may be suggested that in places too many cumulative cases on the same point are given, and more cases might have been given on the equities of the surety, particularly on equitable exoneration. But on the whole, it is a very admirable piece of work, particularly in that part given to the surety's defenses, where will be found most of the problems that arise in connection with the practical working of bonding contracts.

William Henry Lloyd.

OUTLINES OF HISTORICAL JURISPRUDENCE. (Volume I—Introduction; Tribal Law). By Sir Paul Vinogradoff. Oxford University Press, New York City, 1920, pp. ix, 428, and The Clarendon Press, Oxford, 1920.

As the title indicates, the work before us is a treatise, (the first volume of one, to be precise), not on analytical or philosophical jurisprudence, but on the